interests of the public. Corporations are easily supervised and held accountable to the public, while it is difficult, if not impossible, to do that with natural persons. The Supreme Court in the case of *Barbier* v. *Connolly,* 113 U. S. 27, declared "that the Fourteenth Amendment of the U. S. Constitution is not designed to interfere with the police power of the states to prescribe regulations to promote the health, peace, education, morals, and good order of the people," and the decision in the principal case seems to be based upon this. Similar distinctions have been upheld by several state courts. North Dakota held the same distinction in regard to the banking business. *State* v. *Woodmansee* (1890), 1 N. D. 246, 46 N. W. Rep. 970. Pennsylvania held the same restriction constitutional regarding insurance companies, although three justices dissented. *Commonwealth* v. *Wrooman* (1894), 164 Pa. St. 306, 30 Atl. 217. See also MORSE ON BANKING (2d Ed.), p. 1. California held that taxing the franchise of a corporation was not a discrimination between corporations and individuals, in violation of the Fourteenth Amendment. *Bank* v. *County of San Francisco* (1904), 142 Cal. 276. But the proposition has received some dissent. It has been held in South Dakota that a law making such distinction between corporations and individuals is unconstitutional and void. *State* v. *Scougal* (1892), 3 S. D. 55, 51 N. W. Rep. 858.

CORPORATIONS—FOREIGN, TRANSACTING BUSINESS IN STATE—RIGHT OF ACTION—CONDITION PRECEDENT—INTER-STATE COMMERCE.—A Kansas statute forbids any corporation doing business in the state to maintain an action in any of the courts thereof without first filing certain annual reports with the secretary of state. The plaintiff, a foreign corporation, sued upon a note, given for the purchase price of machinery, the order for such machinery having been taken by an agent of plaintiff residing in Kansas. *Held,* (1) that a single transaction by a foreign corporation may constitute a "doing of business," where such transaction is a part of the ordinary business of the corporation; (2) that the statute is not violative of the commerce clause of the federal constitution, even when applied to corporations engaged solely in interstate commerce. *John Deere Plow Co.* v. *Wyland et al.* (1904), — Kan. —, 76 Pac. Rep. 863.

The court followed the better view that even a single act, if it shows an intention to continue business, may constitute a doing of business in the state. "The test is whether the acts done were part of the necessary work for effecting the object for which the association was created." *Commonwealth* v. *Long,* 1 Pa. Co. Ct. 190. See also *Beard* v. *Publishing Co.,* 71 Ala. 60. In respect to the main point involved the court takes an extreme position in construing the statute as applying to corporations engaged wholly in interstate commerce. By the great weight of authority, "doing business in the state," within the meaning of the state statutes regarding foreign corporations, does not include the transaction of the business of interstate commerce. *Cooper Mfg. Co.* v. *Ferguson,* 113 U. S. 727. However, the court maintains that the restriction of the statute is laid not upon the doing of business, but upon the use of the local courts. That a state can lawfully make such restrictions upon foreign corporations not engaged in interstate com-

merce is not to be denied. To the contrary, foreign corporations can not be excluded from suing in the state courts upon transactions of interstate commerce. *Cone Export and Com. Co.* v. *Poole*, 41 S. C. 70; *Miller* v. *Goodman*, 91 Tex. 41; *Pasteur Vaccine Co.* v. *Burkey*, 22 Tex. Civ. App. 232, 54 S. W. Rep. 804; *Gale Mfg. Co.* v. *Finkelstein*, 22 Tex. Civ. App. 241, 54 S. W. Rep. 619; *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28; CLARK & MARSHALL ON PRIVATE CORPORATIONS, § 845, e; COOK ON CORPORATIONS, § 696-§ 700. In *Diamond Glue Co.* v. *United States Glue Co.*, 187 U. S. 611, it was held that a similar statute, as applied to the facts in that case, did not interfere unlawfully with interstate commerce. But the decision rested upon the fact that the contract called for carrying on of business in Wisconsin, and it was left to chance whether the commerce should go outside of the state.

CORPORATIONS, INSOLVENT—PREFERRING CREDITORS—DIRECTORS.—The defendant, an insolvent corporation, executed a deed to Harry L. Arnold, as trustee for certain creditors, and also confessed judgment in favor of certain preferred creditors. The plaintiff sought to cancel and set aside as fraudulent the deed executed to Arnold, and the judgments confessed, and asked for the appointment of a receiver. *Held*, that an insolvent manufacturing corporation may lawfully prefer bona fide claims due to creditors who are directors and officers of the corporation, though the vote of one or more such directors is required to pass the resolution authorizing such preference. *City National Bank* v. *Goshen Woolen Mills Co. et al.* (1904), — Ind. —, 71 N. E. Rep. 652.

In this decision the court follows the precedent laid down in *Nappannee Canning Co.* v. *Reid, Murdock Co.*, 159 Ind. 614, 59 L. R. A. 199. The holding very well illustrates the late harmful tendency of many courts practically to guarantee directors that their claims against an insolvent corporation shall be paid, disregarding all others. *Warfield* v. *Marshall County Canning Co.*, 72 Iowa 666, 34 N. W. Rep. 467; *Blair* v. *Illinois Steel Co.*, 159 Ill. 350, 42 N. E. Rep. 895. This is clearly against the former great weight of authority, and is strongly condemned by many writers. See 10 CYC. 1254; MORAWETZ ON PRIVATE CORPORATIONS, § 787; COOK ON CORPORATIONS, § 692; CLARK & MARSHALL ON PRIVATE CORPORATIONS, § 787, b. In many decisions, even those courts which have repudiated the trust fund doctrine still maintain that the director of an insolvent corporation stands in a fiduciary relation to the creditor, and can take no undue advantage to himself. *Olney et al.* v. *The Conanicut Land Co.*, 16 R. I. 597, 27 Am. St. Rep. 767. Yet if the courts continue to change position as rapidly as during the past few years, no further question will be raised as to the power of directors of insolvent corporations to prefer themselves as creditors.

DAMAGES—BREACH OF CONTRACT.—In a proceeding to foreclose a thresher's lien for threshing certain grain consisting of wheat, oats and barley, the answer raised no issue as to the quantity of grain threshed by plaintiff or the amount of the lien, but set up a counterclaim for damages sustained by plaintiff's breach of contract to thresh defendant's flax, by reason of which, during the delay in obtaining another thresher, part of the flax was destroyed by rain. *Held*, that these damages were not recoverable. *Hayes* v. *Cooley* (1904), — N. D. —, 100 N. W. Rep. 250.